

Panaji, 16th July, 2008 (Ashada 25, 1930)

SERIES II No. 15



OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT No. 2

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/01/2008-LAB/695

The following Award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa, on 02-06-2008 in reference No. IT/62/03 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Parvorim, 17th June, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Anuja Prabhudesai, Presiding Officer)

Ref. No. IT/62/03

Workmen rep. by
Goa Telecommunications and
Systems Ltd., Employees Association,
Plot No. 46-50,
Mapusa, Goa. ... Workmen/Party I
V/s

M/s. Goa Telecommunications and
Systems Ltd.,
Plot No. 46-50,
Mapusa Industrial Estate,
Mapusa, Bardez, Goa. ... Employer/Party II

Party I/Workmen are represented by Adv. Subhash Naik.

Party II/Employer is represented by Adv. P. J. Karat.

A WARD

(Passed on this 2nd day of June, 2008)

In exercise of powers conferred under Clause (d) of sub-section (1) of Section 10 of the said Act, 1947, by order dated 12-8-2003, the Government of Goa has referred to this Industrial Tribunal following dispute for adjudication:

"(1) Whether the following demands served by the Goa Telecommunications and Systems Ltd., Employees Association, Mapusa, Goa on the management of M/s. Goa Telecommunications and Systems Ltd., Mapusa, Goa are legal and justified ?

Demand No. 1: Scope of Coverage

It is demanded that this charter will cover all the members of the Goa Telecommunications and Systems Limited Employees Association.

Demand No. 2: Minimum Wage

It is demanded that all employees in pay scales covered by this charter should be paid a minimum Basic Pay of Rs. 1,220/- per month at Consumer Price Index (AICPI) 1883(1960-100) covered till 30th September, 2001.

Demand No. 3: Basic Pay Scales & Structures

It is demanded that basic pay scales be drawn keeping in view the heavy erosion in money value over the years as also tremendous rise in business of the company in the last 3 years.

The revised pay scales and wage structure should be as follows:

1	720-13/5	785-16/10-945	1220-26/5	-1350-32/10
			1670	

ii)	900-14/5	970-17/10-1140	1400-28/5	-1540-34/10 1880
iii)	1090-16/5	1170-19/10-1360	1590-32/5	-1750-38/10 2130
iv)	1170-18/5	1260-22/10-1480	1720-36/5	-1900-44/10 2340
v)	1250-21/5	1355-26/10-1615	1850-42/5	-2060-52/10 2580
vi)	1340-24/5	1460-30/10-1760	1990-48/5	-2230-60/10 2830
vii)	1430-27/5	1565-34/10-1905	2130-54/5	-2400-68/10 -3080
viii)	1520-31/5	1675-38/10-2055	2270-62/5	-2580-76/10 -3340

The fitment will be done on stage to stage basis.

Demand No. 4: Seniority Increments

It is demanded that the seniority increments should be done as per the number of years of service so a safeguard service weightage, and demand the following seniority increments:-

	Years of Service	Proposed increment
(a)	Confirmed Services upto 15 years	3 increments in appropriate Grades
(b)	Confirmed Services in excess of 15 years	4 increments in appropriate Grades

Demand No. 5: Dearness Relief

It is demanded that dearness allowance at the rate of 65% of basic pay be paid to all categories of confirmed workmen.

Demand No. 6: Variable Dearness Allowance (V.D.A.)

(b) They proposed an alteration in the V.D.A as under:-

Any rise and fall over and above (AICPI) 2191 (1960-100) be payment of V.D.A. on the following corresponding basics:

Upto Basic salary of Rs. 1590	Rs. 2.50 per point rise or fall
From 1591 to 1970	Rs. 3.00 per point rise or fall
1971 and above	Rs. 3.50 per point rise or fall

Demand No. 7: Fixed Dearness Allowance (FDA)

It is demanded that FDA should be suitably revised taking into consideration the rate of inflation. FDA should be paid in the following basic pay scales:

Upto basic pay of Rs. 1590	Rs. 417.50
From 1591 to 1970	Rs. 474.55
1971 and above	Rs. 531.60

Demand No. 8: House Rent Allowance (H.R.A)

It is demanded that workmen should be paid H.R.A. at the rate of 35% of the revised basics.

Demand No. 9: Conveyance Allowance

(a) In view of the constant bus fare hike and petrol hike, it is demanded that reasonable increase in conveyance allowance be paid as under:

	Existing	Proposed
Grade I	150/-	350/-
Grade II	275/-	475/-
Grade III	575/-	775/-
Grade IV	575/-	775/-
Grade V	650/-	850/-
Grade VI	650/-	850/-
Grade VII	700/-	900/-
Grade VIII	700/-	900/-

(b) It is demanded that all those owning and maintaining motorcycles/scooters/mopeds be paid the sum of Rs. 400/- per month as maintenance allowance/cost of petrol.

Demand No. 10: Target Allowance

It is demanded that the existing target allowance of Rs. 300/- per quarter be increased to Rs. 900/- per quarter as per existing terms and conditions.

Demand No. 11: Leave Travel Allowance (L.T.A)

It is demanded that the existing L.T.A. of Rs. 1,200/- per annum should be increased to Rs. 3,600/- as per existing terms and conditions.

Demand No. 12: Medical Allowance

It is demanded that the existing medical reimbursement of Rs. 2,500/- per annum should be increased to Rs. 4,000/- per annum for those who are out of purview of E.S.I.C.

Demand No. 13: Attendance Bonus

(A) It is demanded that minimum of 1 day salary should be paid to the employees present for full days of the month as attendance bonus.

(B) It is demanded that if the employees avail casual leave of 1 day/2 half days/2 quarter days and one half day, 1 day gross salary should be paid.

Demand No. 14: Festival Advance/Non Interest Loan

It is demanded that the existing festival advance of Rs. 1,000/- per annum should be increased to Rs. 3,000/- per annum payable in 12 monthly installments.

Demand No. 15: Canteen Subsidy

(a) It is demanded that the existing canteen allowance should be increased by Rs. 200/- per month.

(b) It is demanded that tea should be provided free for both sessions.

Demand No. 16: Facility during overtime

(a) It is demanded that employees asked to work overtime beyond 9.30 p.m. should be provided dinner or an amount of Rs. 30/- should be paid as dinner allowance.

(b) It is demanded that the existing transport allowance of Rs. 30/- should be raised to Rs. 75/- other terms and conditions will remain the same.

Demand No. 17: Overtime on Company declared Holiday/Weekly of

It is demanded that in case employees are asked to work two shifts at a stretch, they shall be given compensatory off besides overtime.

Demand No. 18: Shift Allowance

(a) It is demanded that Rs. 20/- as second shift allowance be paid instead of existing Rs. 7.50 per shift.

(b) It is demanded that the present night shift allowance of Rs. 10/- be increased to Rs. 30/- per shift.

Demand No. 19: Fume/Conformal Coating Allowance

It is demanded that the existing fume and conformal coating allowance of Rs. 50/- per month should be increased to Rs. 200/- per month.

Demand No. 20: Outdoor Duty Allowance

(a) It is demanded that the present outdoor duty allowance for outstation work beyond 4 hours should be revised to Rs. 50/- as against present Rs. 20/-.

(b) It is demanded that in addition Rs. 10/- as tea expenses as session should be given.

Demand No. 21: Cash Handling Allowance

(a) It is demanded that the existing cash handling allowance of Rs. 100/- per month should be increased to Rs. 300/- per month.

(b) It is demanded that the existing amount of Rs. 50/- should be increased to Rs. 150/- for employee who disburses salary/bonus on the pay day.

Demand No. 22: Leave/Holidays/Related Matters

(a) It is demanded that C/L should be increased to 15 days against existing 11 days.

(b) P/L should be increased to 30 days against existing 21 days.

(i) Encash portion of P/L can be encashed without availing any leave.

(ii) The existing accumulation of P/L 120 days to be increased to 150 days.

(c) The existing sick leave of 3 days should be increased to 5 days for those covered under E.S.I.C.

(i) The existing sick leave of 7 days should be increased to 10 days for those who are out of E.S.I.C.

(d) Every second Saturday of the month should be made a paid holiday.

(e) All the holidays & leave will be effective from 1st October, 2001.

All other terms and conditions will remain unaltered.

Demand No. 23: Accident on Duty

It is demanded that an employee who meets with an accident while on duty should be treated as on duty for the duration of hospitalization or at home.

Demand No. 24: Loan

(a) General Loan

(i) It is demanded that loan ceiling of general loan should be increased to 15 lakhs from existing 7.5 lakhs for employees cadre.

(ii) There shall be no restrictions as to the number of times an employee can avail loan as against the present 3 times. The existing 3rd time loan of Rs. 30,000/- should be increased to Rs. 75,000/-. Other terms and conditions will be the same as existing.

(b) Housing Loan

It is demanded that housing loan of Rs. 1,50,000/- should be introduced by the Company at the rate of 10% simple interest for the purchase of Flat/Plot/Repair House/New Construction.

Demand No. 25: Special Demand

It is demanded that the lists of the members of the association duly signed by the Gen. Secretary and the President of the Union will be given to the Management and the benefit of the loan, LTA, T.A. and Arrears of this settlement and other benefits shall be given only to the members of the Association.

2. If not, what relief the workmen are entitled to ?

2. On receipt of the reference IT/62/03 was registered. Notices were issued to the parties. The Party I has filed his claim statement at Exb. 5 and Party II has filed its written statement at Exb. 6. Based on the pleading of the respective parties following issues were framed:

- 1 Whether the Party I/Union proves that the demands raised by its against the Party II are legal and justified ?
- 2 Whether the applicant is entitled to any relief ?
- 3 What Award ?

3. On 13-6-2005, the Party I filed an application at Exb. 11 stating that they have resigned from the Association and accepted the Bharti Teletech Limited Payment System with effect from 1-4-2005 under a settlement dated 16-5-05 signed between the company Party II and all the workmen. The workmen have also agreed in the said settlement, that they have no claim of whatsoever nature against the company and all their demands raised by the Association on their behalf and pending in the Industrial Tribunal under reference No. IT/62/03 do not survive. The workmen have prayed that no dispute Award be passed.

4. The application at Exb. 11 which is duly signed by the workmen and the Party II clearly indicates that the workmen have accepted the Bharti Teletech Limited Payment System with effect from 1-4-2005 under settlement dated 16-5-05 and that they have no claim whatsoever nature against the Party II. This being the case the dispute does not survive and hence I pass the following order.

ORDER

It is hereby held that the reference does not survive in view of the settlement arrived at between the parties, as per the application dated 13-6-2005 at Exb. 11.

No order as to costs.

Inform the Government accordingly.

Sd/-
Anuja Prabhudessai,
Presiding Officer,
Industrial Tribunal-
cum-Labour Court-I.

Notification

No. 28/01/2008-LAB/699

The following Award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa, on 30-05-2008 in reference No. IT/18/97 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Parvorim, 17th June, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Anuja Prabhudessai, Presiding Officer)

Ref. No. IT/18/97

Workmen rep. by
The General Secretary,
All Goa General Employees Union,
P. B. No. 90,
Vasco-da-Gama. ... Workmen/Party I

V/s
M/s. Damodar Packaging Company,
Kare House,
Near Matropole Cinema House,
P. B. No. 42,
Margao, Goa. ... Employer/Party II

A WARD

(Delivered on this 30th day of May, 2008)

In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa has referred the following dispute for adjudication:

"(1) Whether the action of the management of M/s. Damodar Packaging Co., Margao, Goa, in terminating the services of the following 21 workmen with effect from 5-11-1996 is legal and justified ?

1 Ms. Sulochana Kakodkar, Packer	2 Ms. Shaila Parab, Packer
3 Ms. Irabai Raikar, Packer	4 Ms. Snetal Naik, Packer
5 Ms. Minguelina Colaco, Packer	6 Ms. Seema Kaulekar, Packer
7 Ms. Urvashi Naik, Packer	8 Ms. Priya R. Naik, Packer
9 Ms. Savita Naik, Packer	10. Ms. Priya P. Naik, Packer
11. Ms. Kalpana Naik, Packer	12. Ms. Veena Dessai, Packer
13. Ms. Ranjana Naik, Packer	14. Ms. Swati Tirolkar, Packer
15. Ms. Ranjana Gurav, Packer	16. Ms. Palavi Shirgaonkar, Packer
17. Ms. Rosy Dias, Packer	18. Ms. Pooja Vaingaonkar, Packer
19. Ms. Ratan Goavi, Packer	20. Mr. Ramchandr Borkar, Clerk
21. Mr. Sudhakar Karapurkar, Supervisor.	

(2) If not, to what relief the workmen are entitled ?"

2. On receipt of the said reference IT/18/97 was registered. Notices were issued to both the parties. The Party I (hereinafter referred to as the 'workmen') has filed claim statement at Exb. 4 whereas the Party II has filed its written statement at Exb. 6. The rejoinder of the workmen is at Exb. 7.

3. It is an admitted fact that the Party II had a sister concern, by name M/s. Classic Extrusion Ltd., which was engaged in manufacturing aluminum collapsible tubes. The manufactured items are packed within the same premises in the establishment of the Party II. The workmen has stated that the said business was highly profitable. The workmen have stated that the Party II issued purported notice of closure dated

30-9-1996. By the said notice, which was actually issued on 5-10-1996, the Party II notified its intention to close the factory from 5-11-1996. The workmen had tried to inform the Party II not to resolve to the extreme step of closure and also sought intervention of the conciliation machinery. The conciliation proceeding ended in failure. Upon receipt of the failure report the Government has made the present reference.

4. The workmen have stated that on 5-11-1996 the Party II had issued to each workmen a purported statement of final accounts. It is alleged that no opportunity was given to the workmen to verify the said final accounts. The workmen therefore refused to sign the acquittance roll on the basis of said purported final statement and also refused to receive the cheque. The workmen have stated that they had also learnt, that the Party II had deducted sizable sum of money from their final settlement dues towards payment of their respective dues. It is alleged that the amount which was deducted was not deposited with the bank. The workmen have stated that they have not been paid the dues payable to them upon discharge and as such the retrenchment is vitiated on account of non payment of legal dues. The workmen claim that the termination of their services is bad and illegal.

5. The workmen have further stated that the Party II has not surrendered/cancelled the factory licence sales tax registration and excise registration, on the contrary after giving the notice of closure Party II had applied for renewal of factory licence. It has also purchased an additional modern assembly line machine and diesel generator set. The workmen have stated that production was in full swing upto 5-11-1996 and that in final settlement of account the Party II has declared bonus at the maximum rate of 20%. The workmen have further stated that there is an increase in demand for the product manufactured by the sister concern of the Party II. They have alleged that the closure is sham and pretense and that motive behind is only to harass the workmen for having joined All Goa General Employees' Union. The workmen have further stated that the closure is illegal, unjustified and amounts to illegal lockout. The workmen amended the claim statement in the year 2003 and alleged that the Party II has restarted manufacturing operation on or about 16-2-2002 under name and style "Nilmac Packaging Industries". The workmen have stated that despite the demand of the union the workmen have not been called back to their employment. The workmen have therefore sought re-employment of all workmen concerned in this dispute, with full back wages, seniority and all other consequential benefits.

6. The Party II has denied that it had decided to close the factory because of change of union by the workmen. The Party II has stated that till 5-11-1996 it was engaged in business of cleaning, checking, packing and capping of printed aluminum collapsible tubes. It has stated that the Lumina Home Products Ltd., which was the principle buyer of aluminum collapsible tubes switched

over to laminated tubes for packaging their products and as a result there was sharp fall in the orders for aluminum collapsible tubes. Consequently the entire working of the company had been rendered uneconomic. It was under these circumstances the Board of Directors of the company resolved to close the undertaking w.e.f. 5-11-1996. Pursuant to the said decision all the workers including the workmen were given one month's notice as required under Section 25 FFA of the Industrial Disputes Act. The workmen were asked to collect their working dues on 5-11-1996 between working hours. Similarly, all the workers including the workmen were asked not to remain present in the premises during the notice period on account of non-availability of work. The Party II has stated that on closure of the undertaking all the legal dues under the provisions of Industrial Disputes Act were tendered unconditionally to all the workmen. The Party II has stated that 3 workmen received the dues tendered however the remaining workmen acting under the dictates of the union refused to receive the dues tendered ostensibly to extort more money from the company by adopting coercive tactics. The Party II has denied that the production was in full swing and that the workers worked to their full level. The Party II has stated that the termination of service of the workmen has been effected on the closure of the undertaking and the closure is real and genuine and that the workmen are not entitled for any relief. Subsequent to the amendment of the claim statement, the Party II filed additional written statement at Exb. 15. The Party II has denied that it has restarted manufacturing operation in the establishment since 16-2-2005 under the name and style of M/s. Nilmac Packaging Industries. The Party II has stated that subsequent to the closure the company transferred ownership of the shed alongwith machinery lying therein to a third party by way of sale and that it has no relation whatsoever with M/s. Nilmac Packaging Industries.

7. Based on the aforesaid pleading following issues were framed:

- 1 Whether the Party I proves that termination of the services of the workmen named in the reference amounts to illegal lay off or illegal lock out ?
- 2 Whether the Party I prove that the termination of the services of the workmen named in the reference w.e.f. 5-11-96 is illegal, unjustified and bad in law ?
- 3 Whether the Party II proves that its undertaking at Margao Industrial Estate is closed with effect from 5-11-1996 after complying with the provisions of the I. D. Act, 1947 ?
- 4 Whether the workmen are entitled to any relief ?
- 5 What Award ?

ADDITIONAL ISSUE

2-A Whether the Party I proves that the Party II has restarted the manufacturing operations from 16-2-2002 under the name and style of "Nilmac Packaging Industries" and by not calling back the Party I workmen for employment inspite of the demand made by the union, the Party II has violated the provisions of the I. D. Act, 1947 ?

8 In support of their claim the workmen have examined Shri Anand Betekkar, General Secretary of the union and Smt. Sulochana Kakodkar one of the workmen involved in the reference. The Party II has not examined any witnesses.

9. Learned advocate, Shri T. Pereira has argued on behalf of the workmen. He has argued that the closure notice was issued only with an intention of penalizing the workman for joining the union of their choice, and that the notice of closure was malafide. He has further argued that there is no proof to show that the factory had to be closed down due to recession. He has further argued that the Party I had not surrendered its licence and has infact restarted the factory under a different name. He has argued that there is no real closure is sham and that the workmen are entitled for re-employment. He has further argued that the Party II had deducted the amount payable by the workmen towards loan installment/premium and that the amount so deducted has neither been deposited in the bank nor refunded to the workmen and that the closure is also bad for non payment of legal dues. He has argued that Party II has restarted the business under the name and style 'Nilmac Packaging Industries'.

10. Learned advocate, G. B. Kamat has advanced arguments on behalf of the Party II. He has argued that the witnesses examined by the Party I have admitted that the factory has been closed since 5-11-1996. He has argued that the reason for closure is not material and what is relevant is whether the closure is real or sham. In support of this contention he has relied upon the decision reported in 1969(1) ILJ 242. He has further argued that surrendering the licence is immaterial since the evidence adduced by the workmen shows that no business activity was going on in the factory premises. He has also argued that there is no evidence to show that the company had changed the name or that it is carrying on business under a different name. He has further argued that no dispute regarding the re-employment was referred to the Tribunal and hence cannot entertain the same.

11. I have perused the records and considered the arguments advanced by the respective parties. It is an admitted fact that the sister concern of the Party II was engaged in manufacturing aluminum collapsible tubes. The Party II was engaged in cleaning, checking, packing capping of printing aluminum collapsible

tubes. It is admitted fact that the Party II had displayed notice dated 25-9-96 Exb. W2 on the notice board stating that the factory would be closed w.e.f. 5-11-96. Notices of closure were also served on the individual workman and they were called upon to collect final settlement dues on 5-11-96 between 10.00 p.m. to 5.00 p.m. The witness No. 2, Smt. Sulochana Kakodkar who is one of the workmen has also stated that each of the workman had received a cheque towards his dues and the details/particulars of the dues were mentioned in the covering letter.

12. It is thus clear that the Party II had resorted to closure however, the dispute is to the genuineness of the closure. The workmen have claimed that the closure is sham, pretense and is infact illegal, layoff or lockout whereas the Party II had claimed that the closure is genuine and bonafide.

13. In view of the contentions raised by the respective parties, it is necessary to refer to the definition of the terms 'layoff, lockout and closure' and decide whether the action of the Party II amounts to layoff, lockout or closure. The terms lay off has been defined in Sec. 2 (kkk) of the Act as meaning the failure, refusal or inability of an employer on account of shortage of coal, power or raw material and accumulation of stocks in the breaking down of machinery or for any other reason to give employment to a workman whose name is borne on the muster roll of his industrial establishment and who has not been retrenched.

The term 'lock out' is defined u/s 2(1) as meaning the closing of a place of employment or to suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

Whereas 'closure' as defined u/s 2(cc) means the permanent closing down of a place of employment or part thereof.

14. In the case of General Labour Union, Bombay v/s B. V. Chavan Lab I. C. reported in 1985, 728.

"While examining whether the employer has imposed a lockout or has closed the industrial establishment, it is not necessary to approach the matter from this angle that the closure has to be irrevocable, final and permanent and that lockout is necessarily temporary or for a period. The employer may close down industrial activity bonafide on such eventualities as suffering continuous loss, no possibility of revival of business or inability for various other reasons to continue the industrial activity. There may be a closure for any of these reasons thought these reasons are not exhaustive but are merely illustrative. To say that the closure must always be permanent and irrevocable is to ignore the causes which may be necessitated closure. Change of circumstances may encourage an employer to revive the industrial activity which was really intended to be closed. Therefore the

true test is that when it is claimed that the employer has resorted to closure of industrial activity, the industrial court in order to determine whether the employer is guilty of unfair labour practice must ascertain on evidence produced before it whether the closure was a device or pretence to terminate services of workmen or whether it is bonafide and for reasons beyond the control of the employer. The duration of the closure may be a significant fact to determine the intention and bonafides of the employer at the time of closure but is not decisive of the matter.... Therefore the correct approach ought to be that when it is claimed that the employer is not guilty of imposing a lockout but has closed the industrial activity, the industrial court before which the action of the employer is questioned must keeping in view all the relevant circumstances at the time of closure decide and determine whether the closure decide and determine whether the closure was a bona-fide one or was a device or a pretence to determine the services of the workmen."

15. Reverting to the facts of the present dispute, the workmen had claimed that the Party II had issued a notice of closure as the workmen had joined All Goa General Employees Union. In this context the witness No. 1 Shri Anand Betekar, General Secretary of All Goa General Employees Union has deposed that the workmen involved in this reference had become the members of All Goa Employees Union, sometime in the year 1992. There was settlement between the union and the management of the Party II, the duration of which was for three years from 1-4-1995. At the time this settlement was signed, the employees of M/s. Classic were not the members of All Goa Employees Union. They became the members of the Union in September, 1996 and this fact was informed to the employers on 30th September, 1996. On learning the change of the union by the said employees on 5-10-96 the Party II put up a notice dated 30-9-96 on the notice board, stating that the factory would be closed from November, 1996. He has stated that similar notices were served on the individual workmen. He has deposed that the Party II had stated that the closure was necessitated because there was no demand for the aluminum tubes. He has deposed that the said reason is not genuine and the real reason for closure is change of union by the employees of the Union.

16. The witness No. 2, Smt. Sulochana Kakodkar who is also one of the workmen involved in the reference has deposed that the Party II had become members of All Goa General Employees Union in the year 1992 she has deposed that the employees of Classic Extrusion had become members of Goa Trade & Commercial Workers Union which fact was not liked by them. The management therefore started harassing the workmen and threatened to close the factory. Accordingly, the Party II put up a closure notice dated 28-9-96 on the notice board on 5-10-96 stating that the factory would be closed with effect from 5-11-96. She has further stated

that the Party II had not cancelled the licence and that electricity in the factory and water connection as well as telephone connection was maintained at the factory.

17. The aforesaid evidence indicates that the employees of M/s. Classic Extrusion had become members of All Goa Employees Union in September, 1996. It is alleged that the Party II had resorted to closure because of change of the union by the employees of M/s. Classic Extrusion. It may be mentioned that the employees of M/s. Classic Extrusion had also raised an industrial dispute challenging the closure on the ground that it was sham and pretence and aimed at harassing the employees for joining All Goa Employees Union. The said reference was registered as IT/1/97 and the same has been decided by award dated 29-4-2008 wherein it had already been held that the closure of M/s. Classic Extrusion was not on account of change of union of its employees and that it was necessitated due to cancellation of orders of aluminum collapsible tubes by its principle buyer Lumina Home Products which rendered running of the business uneconomic consequently the closure was held to be real and genuine. It was further held that the closure cannot be held to be sham merely because the licence was not surrendered or because the water electricity and telephone connections were not disconnected. These findings negate the contention of the workmen that the Party II had resorted to closure on account of the change of union by the employees of M/s. Classic Extrusion.

18. It is also pertinent to note that the factory was closed down with effect from 5-11-96. The witness No. 1 Shri Anand Betkikar, the General Secretary of the All Goa General Employees Union had admitted in his cross examination which was recorded on 6-12-99 that the factory of the Party II was closed since 5-11-96. Similarly, the witness No. 2 Smt. Sulochana Kakodkar whose cross examination was recorded on 3-10-00 has also admitted in the cross examination that no production work was going on in the factory of the Party II. This evidence sufficiently proves that no business activity was going on in the factory from 5-11-1999. Though the Party I had amended the claim statement and stated that the Party II had restarted the factory from 16-2-02 under the new name M/s. Nilmac Packaging Industries Ltd., the Party I has not adduced any evidence to prove that the Party II had changed its name to M/s. Nilmac Packaging Industries or that the directors of Party II are also directors of M/s. Nilmac Packaging Industries. This being the case the Party I has failed to prove that the Party II is running the same factory under a new name.

19. Be that as it may, the closure cannot be held to a pretence or sham merely because the business is restarted. The decision in the case of General Labour Union (Supra) makes it crystal clear that the closure need not necessarily be perpetual, final or irrevocable. Subsequently change in circumstances leading to

closure may make it possible to restart to business. Hence what is relevant is whether at the time of closure the employer had bonafide intention of closing down the business or whether it was only a pretence. As stated earlier, the workmen have failed to prove that the closure was aimed at penalizing the workmen for changing the union or that it was malafide. On the contrary as it has been held in IT/1/97 change in packaging concept and termination of contract by Luminas had rendered running of the business uneconomic and this had necessitated the Board of Directors to resolve to close down the factory. The closure was conditions by business exigencies and it was not a cloak for layoff or lockout.

20. The Party I has also challenged the closure on the ground of non payment of legal dues. It is alleged that though sizable amount was deducted from the final settlement dues of the workmen towards payment of their respective bank loan, the said amount was not deposited in the bank. It is stated that money which was due and payable to the workmen was not paid to or tendered to/paid on account of the workmen. In this context Smt. Sulochana Kakodkar has deposed that two workers of the Party II namely Shaila Parab and Rosy Ferrao had obtained loan and the loan amount was being paid by using their salary. She has deposed that at the time of closure the outstanding loan of Shaila Parab was Rs. 4,000/- and that of Rosy Ferrao was 9,000/-. She has deposed that in the final statement of the dues payable to these employees showed that the outstanding loan amount was deducted from the dues payable to them however no such amount was paid to the bank. It may be mentioned here that similar statement was made in IT/1/97 and in the said case, Shri Nagraj Utagi, the Finance Manager of M/s. Classic Extrusion had explained in the cross examination that certain amount was deducted from the salary of the workmen towards payment of loan amount and that the amount so deducted was shown in the final settlement account of the concerned workmen. He had deposed that only when the workmen had accepted the statement of final settlement the amount shown as deducted was remitted to the bank. He had deposed that some of the workmen had not accepted the statement final settlement and that the deductions shown in the statement of these workmen were not remitted to the bank.

21. The evidence in the present case indicates that the Party II had called upon the workmen to collect their final settlement dues. Smt. Sulochana Kakodkar has also admitted that each workman had received a

cheque purporting towards the dues and that the covering letter which was given alongwith the cheque gave particulars of the dues payable to the individual workman. It is thus clear that the Party II had to pay legal dues to the workman in compliance with provisions of Sec. 25 FFF(1) of the Act.

22. Be that as it may, another question which needs to be addressed is whether non payment of dues renders the termination illegal or invalid. In the case of Avon Services v/s Industrial Tribunal reported in 1979(1) ILJ, the apex court reiterated the principles laid down by the constitution bench in the case of M/s. Hathi Singh Mfg. Co. Ltd., and others v/s Union of India and others (1960) 3 SCR 528, wherein it was held that "the legislature has not sought to place closure of an undertaking on the same footing as retrenchment u/s 25 F. By Sec. 25 F a prohibition against retrenchment until the conditions prescribed by that section are fulfilled, is imposed, by Sec. 25 FFF(1) termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice is not prohibited. Payment of compensation and payment of wages for the period of notice are not therefore conditions precedent to closure". It is thus clear that the workmen cannot challenge closure on the ground of non payment of dues.

23. Under the circumstances and in view of discussion supra, the workmen have failed to prove that the closure is sham, pretense or that it amounts to illegal lay off or lock out. The closure is real and genuine and as such termination of services of the workmen cannot be said to be illegal or unjustified. Consequently, the workmen are not entitled for any relief. Hence I pass the following order.

ORDER

It is hereby held that the closure is genuine and real. The termination of services of the workmen is not illegal or unjustified. It is further held that the workmen are not entitled for any relief.

No order as to costs. Inform the Government accordingly.

Sd/-

A. Prabhudesai,
Presiding Officer,
Industrial Tribunal-
cum-Labour Court-I.